



STATE OF CALIFORNIA  
**ELECTRICITY OVERSIGHT BOARD**  
**MEMORANDUM**

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Date: April 13, 2001

To: Electricity Oversight Board Members

Ms. Kari Lynn Dohn, Member  
Mr. Bruce G. Willison, Member  
Senator Debra Bowen, Member  
Assemblyman Roderick D. Wright, Member

From: M. Catherine George, Staff Counsel

**Re: Agenda Item 6A**  
**Status Report Concerning California Power Exchange Corporation**  
**Operations and Bankruptcy**

**This is a status report only and requires no action.**

This memorandum is provided in connection with the report that will be provided to you by the California Power Exchange on the status of its operations and its bankruptcy. It is intended to provide you with a context in which to consider that report.

***Overview***

On January 18, 2001, the Governing Board of the CalPX approved a resolution to downsize the business and wind up the affairs of the CalPX corporation. On January 20, 2001, the Governing Board authorized its Executive Committee, upon a determination that exigent circumstances have arisen and it is infeasible to convene the full board, to authorize the President and CEO of the CalPX to file a bankruptcy petition. On March 7, the Executive Committee of the CalPX Governing Board made the necessary determinations and authorized management to institute voluntary bankruptcy proceedings. The petition, made under Chapter 11 of the United States Bankruptcy Code, was filed on March 9, 2001 in the U.S. Bankruptcy Court for the Central District of California. The assigned judge is Erithe Smith.

The decision to begin downsizing the business and winding up corporate affairs stemmed largely from certain elements of the Federal Energy Regulatory Commission's (FERC) November 1, 2000 and December 15, 2000 orders concerning California's wholesale electric markets.<sup>1</sup> The December 15 Order immediately eliminated from the CalPX's

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<sup>1</sup> These orders are (1) "Order Proposing Remedies for California Wholesale Electric Markets," 93 FERC ¶ 61,121 (November 1 Order) and (2) "Order Directing Remedies for California Wholesale Electric Markets," 93 FERC ¶ 61,294 (December 15 Order).

FERC tariff the requirement that the Investor Owned Utilities sell all of their generation into and purchase all of their generation needs from the CalPX (the “mandatory buy/sell provision”),<sup>2</sup> dramatically reducing the volumes being traded in the CalPX markets. Further, the December 15 Order terminated the CalPX’s wholesale tariffs effective April 30, 2001.<sup>3</sup> Finally, as proposed in the November 1 Order, the December 15 Order directed the CalPX to implement a \$150/MWh “breakpoint” for sales into the CalPX markets effective January 1, 2001. Under this “breakpoint” approach, CalPX was directed to pay a single market clearing price for all load clearing below \$150/MWh but to pay sellers their as-bid price for sales above \$150/MWh.<sup>4</sup> The CalPX anticipated great difficulty and expense in complying with the “breakpoint” directive and informed the FERC that it could not implement the “breakpoint.”<sup>5</sup>

As a result of these regulatory directives and as a result of other market conditions, most notably the substantial defaults by Southern California Edison Company and Pacific Gas & Electric Company, the CalPX Governing Board on January 29, 2001 voted to suspend trading in the CalPX Day Ahead and Day Of markets as of the January 31, 2001 trade day.

### ***Immediate Effects of the Bankruptcy Petition***

In the case of the CalPX, the institution of a bankruptcy proceeding serves two primary purposes. The first is to allow the CalPX to reduce its operating costs and to conserve cash so that it can be applied to the current and ongoing operating expenses necessary to the orderly winding up of the business. The second purpose is to centralize the litigation in which the CalPX has been involved on a variety of fronts. While an automatic stay of litigation was imposed, it should be noted that the CalPX sought a modification of that stay to allow the litigation of the default charge-back procedures now pending at the FERC to be resolved by the FERC.<sup>6</sup> Other litigation pending in the United States District Court awaits the outcome of the charge-back issue at the FERC.<sup>7</sup> In addition, the claim the CalPX submitted the State Board of Control to attempt to recover the value of the

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<sup>2</sup> December 15 Order, p. 48.

<sup>3</sup> *Id.*, p. 45.

<sup>4</sup> November 1 Order, p. 50; December 15, 2000 Order, p. 70.

<sup>5</sup> After a subsequent FERC order found the CalPX in direct violation of its December 15 Order, the CalPX sought guidance as to which of three alternative methodologies it should employ to retroactively approximate the implementation of the “breakpoint.” On April 6, the FERC provided the requested guidance. *See*, 95 FERC ¶ 61,021, mimeo, at 8-9.

<sup>6</sup> To our knowledge, the court has not ruled on the requested stay modification. However, on April 6, the FERC acted on the complaints that had been filed regarding the use of the CalPX’s default charge-back procedures under its tariff, directing the CalPX to rescind all prior charge-back actions relating to the IOU’s liabilities and to refrain from taking any future charge-back actions relative to the IOUs’ liabilities. *See*, 95 FERC ¶ 61,020, mimeo, at 13-14.

<sup>7</sup> In response to the defaults of SCE, PG&E and others, the CalPX implemented default charge-back provisions of its tariff. CalPX’s procedures have resulted in a multitude of legal proceedings at FERC and in civil court.

Block Forward Market (BFM) contracts commandeered by Governor Davis on January 29 awaits hearing and resolution by that Board. The CalPX has asserted that the market value of the commandeered contracts is approximately \$1 billion. The CalPX will submit a written case to and participate in a hearing before the Board of Control shortly.

The Attorney General's office has contracted with outside firm of Felderstein, Willoughby and Pascuzzi to advise the administration on bankruptcy matters. Through that office, we are in receipt of the documents filed to date in the bankruptcy proceeding and have arranged to receive and will review all future documents submitted to the court. We have not, nor do we anticipate the need to, become a party to the bankruptcy proceeding but will continue to evaluate the circumstances as they evolve.

### ***Status of CalPX Operations and Outstanding Issues***

The CalPX has advised us that it hopes to close its doors on May 31, 2001. The current number of employees at the CalPX is 40. As indicated above, the CalPX ceased trading at the end of January. It also ceased its scheduling operations on February 14. Since that time, the CalPX has been in the process of winding up by trying to settle transactions and issue invoices for payments due. As a result of the recent FERC decision providing guidance on the retroactive implementation of the \$150 "breakpoint," the billing for January 2001 trading can now be completed, although it is likely to take several weeks to implement the methodology. In addition, the process for resolving settlements associated with scheduling is anticipated to continue until mid May. One of the most critical issues requiring resolution during the wind up process concerns the physical safeguarding and access to the CalPX settlements, bid, compliance and corporate data. This matter will be the topic of a separate memo to you next week.

In addition to winding up its affairs, the CalPX has also been engaged in responding to requests for information or subpoenas from the State Auditor (the State Auditor's report was issued March 23, 2001), the Attorney General, the California Public Utilities Commission (both the Commission and separately the Consumer Services Division), the EOB, the FERC, and the General Accounting Office. The CalPX has indicated that the State Senate also has commenced an investigation.

In order to ensure that a sufficient number of qualified personnel remain with the CalPX to complete the wind up process, the CalPX has sought and obtained from the court the authority to pay accrued vacation, payroll and short term incentives to CalPX employees for the period prior to March 9. It also has requested that the court approve a stay bonus and retention payment plan for critical personnel. A ruling from the court on this request is expected soon.

We will keep you apprised of significant developments as they occur. In the meantime, if you would like additional information, please let us know.